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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,667	10/17/2003	Philip L. White	870P009745-US(101)	2619
2512	7590	03/26/2004	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 03/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/688,667	Applicant(s) WHITE ET AL.	
	Examiner Sameh H. Tawfik	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 8-13 and 22-28 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10172003</u> | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-7, drawn to a method for sealing a heat sealable material.

Group II, claim(s) 8-14 and 22-28, drawn to a heat sealing machine.

Group III, claim(s) 15-21, drawn to a computer program.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Groups I and II lack computer readable program code means; Group I lack a processor operable to automatically select a heating time.

During a telephone conversation with Janik Marcovici on 2/3/2004 a provisional election was made without traverse to prosecute the invention of Group II, claims 8-14 and 22-28.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-7 and 15-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 8-11 and 22-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherney (5,466,326).

Cherney discloses a heat sealing machine comprising a mechanism for dispensing a desired length of a heat sealable material (Fig. 2; via motion control of feeding the web 18); a processor (Fig. 2; via PLC 20) operable to automatically select a heating time (Fig. 2 and column 5, lines 42-47; via by controlling the speed of feeding the web it make it stay longer or shorter time in the sealing station) based on one or more sealing parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time (column 5, lines 24-27); and a heating device (Figs. 2 and 13; via 14) for applying heat to a portion of the heat sealable material according to a processor controlled sealing routine that utilizes the automatically selected heating time (Figs. 2 and 3; via 20 PLC).

Regarding claims 9 and 27: the processor is operable to determine values for the minimum heating time and maximum heating time parameters (column 7, lines 17-20; note that for different velocity of the web is different heating time, because the web stay either shorter or longer time on the sealing station) based on whether a first sealing operation of a batch is being performed (column 7, lines 46-48).

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Regarding claims 10 and 28: a control for selecting a thickness of the heat sealable material, wherein the processor is operable to determine values of the sealing parameters based on the thickness of the heat sealable material (column 7, lines 12-17).

Regarding claim 11: the processor is operable to compare the automatically selected heating time to a minimum sealing time and a maximum sealing time (Figs. 2 and 3; via alarm 27 to avoid from exceeding the minimum or maximum sealing time).

Regarding claim 23: wherein a bag count of 0 results in a first sealing time (Fig. 2; via right before feeding the web to the sealing station).

Regarding claim 24: wherein a bag count of other than 0 results in a second sealing time (via after feeding the web to the sealing station).

Regarding claim 25: wherein the program is operable to compare the automatically selected sealing time to a minimum sealing time and a maximum sealing time (Figs. 2 and 3; via alarm 27 to avoid from exceeding the minimum or maximum sealing time) determined by a thickness of the dispensed bag (column 7, lines 12-17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherney (5,466,326).

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Cherney discloses a preheat the heating device (note that by turning on the sealing apparatus it goes through an initial stage of pre-heating to get to the final heating stage) and cool stage (column 1, lines 20 and 21). Cherney does not disclose that preheat the heating device for a fourth time period nor cooling the heating device for a fifth time period. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Cherney's sealing machine by pre-heating the heating device for a fourth time period and cooling the heating device for a fifth time period, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Allowable Subject Matter

Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Melville 5816990, Latter 5705026, Mitchell 5080643, Blaser 5041070, Bennett 4945712 disclose different type of heat sealing machine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809.

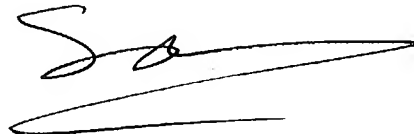
The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sameh H. Tawfik
Patent Examiner
Art Unit 3721

A handwritten signature in black ink, appearing to be 'Sameh H. Tawfik', with a long horizontal flourish extending to the right.

ST.